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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION
6

7 EDDIE SHERMAN THOMAS,

8 Plaintiff,

9 vs.

10 UNITED STATES OF AMERICA,

11 Defendant.
12

Case No: CR 06-0189 SBA

ORDER

Docket 517

13
14 The parties are presently before the Court on Eddie Sherman Thomas' ("Thomas")
15 renewed motion for return of seized property pursuant to Rule 41(g) of the Federal Rules of
16 Criminal Procedure. Dkt. 517. Thomas seeks the return of \$9,825, plus interest, in U.S.
17 currency taken from him at the time of his arrest in 2006 and later administratively forfeited
18 to the United States ("Government"). Id. The Government opposes the motion. Dkt. 519.
19 In its opposition, the Government argues that Thomas' motion should be denied because
20 Thomas received adequate notice of the administrative forfeiture proceeding and failed to
21 file a timely claim contesting the proceeding. Id. In support of its position, the
22 Government submitted nineteen exhibits. Id. In reply, Thomas argues that an order setting
23 aside the declaration of forfeiture is appropriate because he was deprived of his property
24 without due process of law as he did not receive "personal notice" of the forfeiture
25 proceeding. Dkt. 520. In support of his position, Thomas submitted two exhibits. Id.

26 Where, as here, a Rule 41(g) motion is filed when no criminal proceeding is
27 pending, the motion is treated as a civil complaint seeking equitable relief. United States v.
28 Ritchie, 342 F.3d 903, 906 (9th Cir. 2003). While the Government effectively seeks

1 dismissal of Thomas' complaint, it does not style its opposition as a motion to dismiss or a
2 motion for summary judgment. However, because the Government relies on evidence that
3 cannot be considered on a motion under Rule 12(b)(6) of the Federal Rules of Civil
4 Procedure, the Court finds that the Government's opposition should be converted into a
5 motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. See
6 U.S. v. Ibrahim, 522 F.3d 1003, 1007-1008 (9th Cir. 2008). Given the conversion of the
7 Government's opposition into a motion for summary judgment, the Court will afford
8 Thomas an opportunity to file a supplemental brief and additional evidence. See
9 Fed.R.Civ.P. 12(d) (when a motion to dismiss is converted into a motion for summary
10 judgment, "[a]ll parties must be given a reasonable opportunity to present all the material
11 that is pertinent to the motion.").

12 Accordingly,


13 IT IS HEREBY ORDERED THAT:

14 1. Thomas' renewed motion for return of seized property is treated as a civil
15 complaint and the Government's opposition is converted into a motion for summary
16 judgment.

17 2. Thomas may file a supplemental brief in response to the Government's
18 motion for summary judgment not to exceed five (5) pages by no later than twenty-one (21)
19 days from the date this order is filed. Thomas may also file any additional evidence
20 relevant to the Government's motion. In the event Thomas elects to file a supplemental
21 brief, the Government may file a response not to exceed five (5) pages by no later than
22 seven (7) days from the date the brief is filed. Upon the completion of briefing, the Court
23 will take this matter under submission.

24 IT IS SO ORDERED.

25 Dated: 11/6/2013

26 
27 SAUNDRA BROWN ARMSTRONG
28 United States District Judge